IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/02/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 5881 of 2000 and W.P.NO. 5882 OF 2000
AND
W.M.P. NOS. 8852, 8853 OF 2000
W.M.P. NOS. 33511 & 33512 OF 2001

K. Selvaraj .. Petitioner in WP No. 5881/2000
D.R. Krishnamurthy .. Petitioner in WP No. 5882/2000

-Vs-

State of Tamil Nadu rep.
by The District Collector
Tiruchirappalli District
Tiruchirappalli. .. Respondents in both WPs

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorari as stated therein.

For Petitioners : Mr. T.Murugamanickam

For Respondent : Ms. D.Malarvizhi, GA

:ORDER

1. In W.P. No.5881 of 2000, the writ petitioner, K.Selvaraj, has prayed for the issue of a writ of certiorari to call for the records of the respondent in Na.Ka.No.W6/2917/2000 dated 24.2.2000 and published in the Tiruchirappalli Gazette No.6 dated 8.3.2 000 and quash the same.
2. In W.P. No.5882 of 2000, the writ petitioner, D.R.Krishnamurthy, has prayed for the issue of a writ of certiorari to call for the records of the respondent in Na.Ka.No.W6/2917/2000 dated 24.2.2000 and published in the Tiruchirappalli Gazette No.6 date d 8.3.2000 and quash the same.
3. The Special Tahsildar, Adi Dravidar Welfare, Tiruchirappalli, issued a Form-II Notice under Rule 3 (1) on 27.12.99 calling upon the petitioner in both writ petitions to show cause as to why his lands should not be acquired for the purpose of construct ion of additional building to the Adi Dravidar Welfare Middle School. The petitioner in both the writ petitions raised objections. Overruling the objections submitted on 2.2.2000, the respondent District Collector decided to acquire the lands in exerci se of powers conferred under Section 4 (1) of The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, and published in the District Gazette dated 8.3.2000. The purpose set out in Section 4 (1) Notification in the District

Gazette also is "for construction of additional building to Government Adi Dravidar Welfare Middle School at Devimangalam". In both the writ petitions same notification is being challenged by the owners of two different survey fields and the contentions advanced in both writ petitions are substantially the same.

4. The respondent filed an application to vacate the stay in WMP No.33511 & 33512 of 2001. As seen from the said affidavit, Section 4 (1) Notification was published in Tiruchirappalli Gazette on 8.3.2000 under Tamil Nadu Act 31 of 1978. The purpose of notification is for providing additional space to the upgraded Adi Dravidar Welfare Middle School at Devimangalam. It is the stand of the respondent that the procedure contemplated under Act 31 of 1978 had been strictly followed and that the lands compr ised in SF Nos. 592 and 308 is needed for the construction of additional building for the school and there is no other available space in the village. It is also contended that the scheme is a welfare scheme and the educational needs of village by provi ding infrastructure facilities in the school adjacent is also for a public purpose. Identical affidavit has been filed in both the writ petitions by the respondent.

5. Apart from raising other contentions, the learned counsel for the petitioners Mr.T.Murugamanickam, raised a substantial contention that there could be no acquisition under the Tamil Nadu Act 31 of 1978 except for the purpose of Harijan Welfare Schemes . The acquisition in the present case is for the purpose of putting up additional school building and it will not fall under the Harijan Welfare scheme as defined in the Act and, therefore, the action of the respondent is without jurisdiction, illegal a nd liable to be quashed. The learned Government Advocate appearing for the respondent in both the writ petitions contended that the acquisition of land for putting up additional construction for Adi Dravidar school could very well be acquired under Tami l Nadu Act 31 of 1978 and the acquisition is not liable to be interfered.

6. Heard Mr. T.Murugamanicakam, learned counsel appearing for the petitioner in both the writ petitions and Ms.D.Malarvizhi, learned Government Advocate appearing for the respondent in both the writ petitions.

7. Though in both the writ petitions various other contentions have been advanced, it may not be necessary to deal with all those contentions as the substantial contention advanced by the petitioner in both the writ petitions deserves to be sustained.

8. The point that arise for consideration in both these writ petitions is :- "Whether there could be an acquisition of land under Tamil Nadu Act 31 of 1978 for the construction of additional school building to Adi Dravidar Welfare Middle School and for playground ?"

9. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, was enacted by the Legislature of the State of Tamil Nadu and it extends to the whole of the State of Tamil Nadu. The Act came into force on 24.9.1979. The validity of the Act was challenged and the Division Bench of this Court declared that the Act is unconstitutional. But on appeal, the Apex Court in STATE OF TAMIL NADU VS. ANANTHI reported in 1995 (1) SCC 519 held that the enactment is a valid piece of legislation.

10. The Act has been enacted for giving effect to the policy of the State towards securing the principles laid down in Part IV and in particular Article 46 of The Constitution. The object of the Act being to provide for

acquisition of land for harijan w elfare schemes.
11. Section 3 (f) defines the expression "Harijan", which includes members of the Scheduled Caste and Scheduled Tribes as specified in The Constitution (Scheduled Caste Order, 1950) and The Constitution (Scheduled Tribe Order, 1950) as amended.
12. Section 3 (g) defines the expression "Harijan Welfare Scheme". The definition reads thus :-
""Harijan Welfare Scheme" means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans."
13. From the said definition it is clear that for provision of dwelling house for harijans, provision of burial or burning grounds for harijans, provision of pathway leading to such dwelling houses, burial or burning grounds or for providing any other am enity for the benefit of harijans, lands could be acquired. In this case, the acquisition is not for provision of dwelling house nor it is for burial or burning ground nor it is for any connecting pathway leading to such dwelling house, burial or burnin g grounds.
14. The learned Government Advocate contended that the construction of additional building of the Adi Dravidar Middle School will fall under the expression "for providing any other amenity for the benefit of Harijans" and, therefore, the acquisition coul d be undertaken under Tamil Nadu Act 31 of 1978.
15. Per contra it is contended by the learned counsel for the writ petitioner that for providing any other amenity for the benefit of harijans should be read ejusdem generis with the earlier portion of the definition. There is force in the contention ad vanced by the counsel for the petitioner. If the acquisition is for a dwelling house or burial or burning grounds or for pathway, or any other amenity connected therewith, it cannot be contended that acquisition is not for harijan welfare scheme.
16. In TRIBHUBAN PRAKASH NAYYAR VS. UNION OF INDIA reported in AIR 1970 SC 1240, the Apex Court, while interpreting the subsidiary rules of interpretation, namely, rule of ejusdem generis, held thus :-
"The rule of ejusdem generis reflects an attempt to reconcile in compatibility between the specific and general words in view of the other rules of interpretation that all words in a Statute are given effect, if possible, that a Statute is to be construe d as a whole and that no words in a Statute are presumed to be superfluous. Ejusdem generis rule being one of the rules of interpretation, only serves, like all such rules, as an aid to discover the legislative intent; it is neither final nor conclusive and is attracted only when the specific words enumerated, constitute a class, which is not exhausted and are followed by general terms and when there is no manifestation of intent to give broader meaning to the general words."
17. It is equally well settled that meaning of a word has to be judged by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Legislature with reference to words found in immediate connection with them. Accordin g to Maxwell, the rule of ejusdem generis means that when two or more words, which are susceptible to analogous manner or coupled together, they are understood by use in their cognate sense and they are restricted to a sense analogous of a lis general. The meaning of the doubtful

word may be ascertained by meaning of the reference words associated with it.
18. In Kavalappara kottarathil kochuni & others VS. STATE OF MADRAS & OTHERS reported in AIR 1960 SC 1080, the Apex Court held that when particular words pertaining to a class, category or genes are followed by general words, generally the words are cons trued as limit of things of the same kind as those specified. This rule reflects an attempt to reconcile incompatibility between specific and general words in view of the other rules of interpretation when all words in a statute are given effect if poss ible; that a statute has to be as a whole and that no words in a statute are presumed to be superfluous. The rule applies that the statute contains an enumeration of specific words; the subjects of enumeration consists of a class or category; that class or category is not exhaustive; the general terms follow the enumeration and there is no indication of a different intentment of the Legislature.
19. Therefore, while interpreting the definition of the expression "other amenities" has to be read ejusdem generis with the earlier portion of the definition clause, namely, provision of dwelling house, burial or burning grounds or pathway to Adi Drav dar. The above group of words, namely, dwelling houses, burial or burning grounds and pathway connecting pertains to a class or category and, therefore, the term "other amenities" following the said category of expression of expression, in the absence o f any other legislative intent to the contra, the words "other amenities" which follow the words dwelling houses, burial or burning grounds and pathway connecting should be given a restricted or some meaning should be considered with reference to the thr ee purpose and not a new object or purpose than those three or totally unconnected with the purpose of the scheme as defined.
20. It is true in this case the school concerned is Adi Dravidar Welfare Middle School established and run by the Adi Dravidar Welfare Department of the State of Tamil Nadu where not only Adi Dravidar or Harijans, but also all others in the locality are studying. It may be that the land is required for the purpose of the school and it is a public purpose, but the question whether the land could be acquired under The Tamil Nadu Act has to be examined.
21. The construction of additional building for Adi Dravidar Middle School is not an amenity for the benefit of harijans, which may go along with the earlier part of the definition, namely, dwelling house, burial or burning grounds or pathway leading to such dwelling house, burial or burning grounds. School building, it is rightly pointed out cannot be considered as an amenity for the benefit of harijans, The school has already been established and there are existing buildings also. The acquisition u nder Tamil Nadu Act could be for the purpose of the scheme, namely, Harijan Welfare Scheme as defined under the Act and not for any other purpose.
22. The Act contains a declaration in Section 2. The said declaration reads thus :-
"2. Declaration - It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles laid down in Part IV, and in particular Article 46 of the Constitution."
23. As seen from the declaration, the Act has been enacted to give effect to the policy of the State towards securing the principles laid down in Part IV and in particular Article 46 of The Constitution. Article 46 of The Constitution reads thus :-
"Promotion of educational and economic interests of Scheduled Castes,

Scheduled Tribes and other weaker sections - The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

24. Article 46 merely declares the objectives of the State and like other directive principles and the Constitution directs that the State shall promote with special care the education and the economic interest of the weaker sections of the people and in particular the Scheduled Castes and Scheduled Tribes. Part IV of The Constitution provides the directive principles of State Policy. Article 37 provides that the provisions contained in Part IV shall not be enforceable by any Court. The principles, h owever, laid down therein are nevertheless fundamental in the governance of the country. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting social order for the welfare of the people.

25. Article 39 directs that the State shall direct its policy towards securing for adequate means and livelihood for distribution of material resources to the community for the common good; the operation of economic system does not result in the concentr ation of wealth and means of production to the common detriment; equal pay for equal work for both men and women; the health and strength of workers and the tender age of children are not abused; the children are given opportunity and facilities to devel op in a healthy manner, etc.

26. Article 39 provides for equal justice and other legal aid. Article 46 provides for promotion of educational and economic interests of Scheduled Castes and Scheduled Tribes and other weaker sections. Article 46 provides for removal of economic inequ alities. This directive principle is sought to be achieved as seen from Section 2 of the Act, where the State Legislature has declared to give effect to Article 46 of The Constitution and acquisition, if any, is for harijan welfare schemes or which are incidental to such scheme, namely, dwelling houses, burial or burning grounds or pathway connecting dwelling houses or burial or burning grounds. Other amenity for the benefit of harijans, as already pointed out, should be read ejusdem generis with the earlier part of definition clause and nor independent of it. Adi Dravidar school is not an amenity nor it is exclusively meant for harijans alone. Whoever in the locality comes forward, they will all be admitted in the said school and they get the be nefit and their educational requirements are being met by these schools.

27. Incidentally we have to consider the scope of the expression "amenity" appearing in the definition clause. Amenity is generally something which enhances the desirability of the property in the context of its enjoyment. Amenities with reference to d welling house or burial or burning grounds would normally include facilities such as a common water supply or supply of electricity such as street lighting or streets passages, lavatories, or sanitary services or washing or alike. If we refer to Explana tion 17 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the expression "amenities" as defined by the legislature include supply of water, electricity, staircase, lavatories and conservancy or sanitary services. Supply of electricity, water, etc., the source of natural light and air already existing in a house or items which are normally provided in a kitchen like grinding stone or mortar or a bath are amenities.

28. With reference to the provision of dwelling house or burial or burning grounds or for that matter the roads connecting dwelling house, burial or burning grounds amenities, if at all, may include provision of water facility or electricity facility or such other essentials alike. Education institution will not fall under the category of amenities in respect of dwelling houses or place of dwelling of Scheduled Castes or Scheduled Tribes. Even comprehending a wider meaning in the context, providing d rinking water facilities or providing a common well or digging a common well or providing passage or connecting strip of land or providing electricity or provision of lighting facility or drainage facility or disposal of sewerage, or alike, if at all, ma y fall within the expression "amenities", which could be provided for the benefit of Harijans. The expression will not include a school or a school building and acquisition for a school building will not fall under the ambit of scope of "amenities".

29. Therefore, it is clear that no land could be acquired under The Tamil Nadu Act for providing additional construction for school building as it will not fall under the "Harijan Welfare Scheme" or it is not an amenity and it will not fall under the sco pe of expression "amenity".

30. It may be that the school building or additional classrooms for the school, which caters the educational needs of the village is a public purpose as defined under Section 3 (f) of The Land Acquisition Act. Clause (6) of the said definition includes the provision of land for carrying out any educational, housing, health, etc. Therefore, there could be an acquisition, if at all, under The Land Acquisition, 1894, and not under The Tamil Nadu Act 31 of 1978.

31. In the circumstances, invocation or exercise of powers of acquisition under Tamil Nadu Act 31 of 1978, for the purpose of putting up an additional school building or additional building cannot be undertaken under the Act, and on this ground the impug ned proceedings deserves to be quashed.

32. All the other points need not be examined though the learned counsel for the petitioner sought to raise other contentions as well such as non-application of mind, failure to provide opportunity and violation of Section 4 as well as the Rules framed u nder Tamil Nadu Act 31 of 1978.

33. In the result, the writ petitions are allowed and the impugned acquisition proceedings are quashed. This Court makes it clear that it is open to the respondent or the State Government to invoke the provisions of The Land Acquisition Act, 1894, for t he purpose of acquiring the land for the school. The parties shall bear their respective costs. Consequently, connected miscellaneous petitions are closed.

17.02.2003
Index : Yes
Internet : Yes
GLN

To

The District Collector
Tiruchirappalli District

Tiruchirappalli.